

**MEMO**

To: Board of Environmental Review

From: Edward Hayes, Attorney

Date: September 20, 2002

Subject: House Bill 521 and House Bill 311 Review for the amendments of ARM 17.24.101, 17.24.102, 17.24.103, 17.24.104, 17.24.106, 17.24.115, 17.24.116, 17.24.117, 17.24.118, 17.24.119, 17.24.140, 17.24.146, 17.24.167, 17.24.184, pertaining to the Metal Mine Reclamation Act.

HB 521 REVIEW

House Bill 521 (1995), requires the Department of Environmental Quality (the Department) to include a written finding if the proposed rule contains any standards or requirements that exceed the standards or requirements imposed by comparable federal law. The written finding must discuss the policy reasons supporting the proposed rule and how the proposed state standards or requirements protect the public health or the environment of the state. The written finding must also indicate that the proposed state standards or requirements can mitigate harm to the public health or the environment and are achievable under current technology. Finally, the written finding must set forth the costs to the regulated community directly attributable to the proposed state standard or requirement. House Bill 521 (1995) is applicable to Title 50, Chapter 2 (Local Boards of Health); Title 75, Chapter 2 (Air Quality Act); Title 75, Chapter 5 (Water Quality Act); Title 75 Chapter 10 (Waste and Litter Control); and Title 76, Chapter 3 (Local Regulation of Subdivisions).

The proposed rule amendments listed in the above caption were not promulgated under the statutory provisions relating to Local Boards of Health, Air Quality, Water Quality, Waste and Litter Control or Local Regulation of Subdivisions. Rather, the proposed rule amendments were promulgated under Title 82, Chapter 4, Part 3 (Metal Mine Reclamation Act). Because House Bill 521 (1995) is not applicable to the Metal Mine Reclamation Act, no written findings are required regarding the proposed amendments to rules promulgated thereunder.

HB 311 REVIEW

HB 311 (1995), the Private Property Assessment Act, codified as § 2-10-101 through 105, MCA, requires a state agency to evaluate whether state agency action with taking or damaging

implications might result in the taking or damaging of private property. "Action with taking or damaging implications" is defined as follows:

[A] proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana Constitution.

§ 2-10-103(1), MCA. Pursuant to Section 2-10-104, MCA, the Montana Attorney General has developed guidelines, including a checklist, to assist agencies in identifying and evaluating agency actions with taking or damaging implications.

I have completed the "Private Property Assessment Act: Initial Analysis" developed by the Montana Attorney General for each of the substantive proposed rule amendments. Based upon completion of the checklists, I conclude that the proposed rule amendments are not covered under the Private Property Assessment Act and that no further analysis for taking and damaging implications is required.